IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1855

PAUL W. MILHOUSE and EWING T. WAYLAND, Being Those Persons upon Whom Service of Process Was Attempted on Behalf of THE UNITED METHODIST CHURCH, a Named Defendant in the Underlying Action,

Petitioners,

VS.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA,

Respondent.

and

CHARLES W. TRIGG, et al.,

Real Parties in Interest

On Petition For Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL STATEMENT AND REPLY BRIEF OF PETITIONERS

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SUPPLEMENTAL STATEMENT OF FACTS

Since the filing of the petition for certiorari herein, petitioners filed with the District Court a motion to vacate the entry of default against the United Methodist Church and to permit the petitioners to file an answer on behalf of the denomination. The proposed denominational answer con-

tinued to assert that the United Methodist Church was not a jural entity and that the petitioners were not authorized by the denomination to speak in its behalf. However, in view of the District Court's determination to the contrary, and in order to avoid a substantial default judgment, petitioners were prepared to answer on behalf of the denomination to the extent anyone could do so. Respondents herein opposed the motion, stating:

> "All that is, again, is an attempt to raise what was decided by this Court, and has passed before the other courts, the Ninth Circuit, and is now before the United States Supreme Court. If they want to file an affirmative defense, let them say that the United Methodist Church has filed them [sic]."
>
> Transcript of Argument, July 21, 1979, at 13.

After a hearing, the District Court accepted respondents' arguments, held the proposed answer to be inadequate and refused to vacate the default. *Id.* 18-24.

This new development is included herein and addressed in the argument regarding due process and standing, below, pursuant to Supreme Court Rule 24(5).

ARGUMENT

The petition for certiorari in this case asks this Court to determine whether there are constitutional limitations on the "unincorporated association" rule which prevent a non-cohesive religious denomination, such as the United Methodist Church, from being sued for damages. The brief in opposition attempts simply to ignore these questions. In what amounts to a theological treatise authored by persons without theological competence, respondents posit the United Methodist Church as a monolith, with some central force directing the actions of each denominational unit.[1] Their technique is to attribute to the international denomination labeled "UMC," all of the actions taken by any individual member or unit within the denomination, thus, for example, insisting that this petition was brought by "UMC" and that "UMC" litigated the issues in the District Court. (Brief in Opposition—"Br."—at 5, 7, 9n. 5, 12, etc.)

In fact, the United Methodist Church is not a monolith; it has not and cannot take any action in this lawsuit. And it is precisely for this reason that the petitioners—those served with process in the name of the denomination—have challenged that service, contending that the United Methodist Church cannot, consistent with due process and the guaranty of free exercise of religion, be remade into a litigating entity.

In this reply, then, petitioners first point out the falsity of the numerous representations about the denomination contained in the brief in opposition, note respondents' failure to address the constitutional issues raised by the petition, answer the new "standing" argument asserted in the

[1] "Respondents" refers to the plaintiffs in the underlying proceeding, who are the real parties in interest.

opposition brief and finally, show that this case is ripe for review and has reached a decisive point. Much of the matter raised by respondents in their opposition brief is dealt with in the Petition for Writ of Certiorari in *Frank T. Barr* v. *The United Methodist Church,* presently pending before this Court as No. 79-245 (the "*Barr*" case). Petitioners respectfully renew their suggestion that the *Barr* case be consolidated and considered together with the present one.

I.

RESPONDENTS' BRIEF DISTORTS UNITED METHODIST POLITY TO CREATE THE FALSE APPEARANCE OF A MONOLITHIC ENTITY

In the trial court, respondents took the position that any organization could be sued as an unincorporated association so long as its members had a common purpose and common name. (Plaintiffs' Consolidated Memorandum, June 30, 1978 at 45.) The implications of that position, as noted in the petition, are absurd; significantly, respondents do not contend for it in their brief in opposition. Rather, they would have this Court believe that the United Methodist Church is a quasi-corporate entity, the type of organization for which the unincorporated association rule was devised. See *United Mine Workers* v. *Coronado Coal Co.,* 259 U.S. 344 (1922). Respondents attempt to prove the "corporate" existence of United Methodism by gathering bits and pieces of church literature and fragmentary *Book of Discipline* references to the "Church." These they take as showing that the entire denomination functions as a "contractor," an "employer," an "owner of property," a "litigator" and the like. The argument apparently is that since these functions have been ascribed to "UMC," it must be a separate quasi-corporation jural entity, wholly ignoring the fact that such

references are intended to relate to the functions of the many separate religious units which collectively comprise the denomination.

As any practicing United Methodist knows, respondents are quite wrong. The fallacy of their expedient presentation is that it is question-begging. Whenever reference is made to "Church" in *The Book of Discipline,* respondents conveniently assume the very point at issue; namely, that the term refers to some unified corporate body of jural character, rather than the worldwide spiritual confederation which it really is.

Looking past respondents' rhetoric to the uncontradicted expert evidence, it is clear that The United Methodist Church, as a total denomination, has never done any acts which would be illustrative of a unitary legal capacity. There are absolutely no "jural activities" carried on by any discrete denomination-wide entity, comparable to the international union in *United Mine Workers. All* such activities in United Methodism are those of individual denominational units (App. Ex. 2, Par. 2).

A few examples of the respondents' technique, which apparently influenced the District Court, suffice to illustrate the error of their characterizations.

1. The Denomination as "Contractor."

Each of the 45,000 jural units of United Methodism, of course, has the capacity to contract. Yet, respondents declare that an overarching additional entity, "UMC," "is a party to contracts." (Br. at 18.) If this were the fact, borne out by a history of denominational contract-making over its two hundred years of ministry, respondents surely would have introduced numerous such contracts made or executed by the "United Methodist Church" or its antecedents. In-

stead, after extensive discovery, the best support which respondents can muster for their claim is the language contained in Pars. 670-671 in *The Book of Discipline* wherein churchmen discuss the "Church's" responsibility for covenants of religious comity and cooperation with other religious groups.[2] *The Book of Discipline* gives no authority to any person or continuing body to contract on behalf of the entire denomination.

2. The Denomination as "Employer."

Each of the denomination's constituent units, of course, has employees. Respondents insist that "UMC" also "has employees" (Br. 19.) Again, if this were factual, and reflected by a history of employment activity on a denominational plane, respondents surely would have produced witnesses describing themselves as employees of the "United Methodist Church," *per se,* and would have amassed paychecks, withholding slips, an employer identification number and other typical employment materials issued by the United Methodist Church. Yet even after wide-ranging discovery, no such showing has been or can be made. Instead, respondents again turn to selected passages in *The Book of Discipline,* giving the Board of Pensions (a separate incorporated denominational unit) certain responsibilities with regard to persons described as "employees of The United Methodist Church." (*The Book of Discipline,* at Par. 1701.)

In their assertions to this court, respondents never consider the possibility that "Church employee" might refer broadly to persons employed by a local church, board,

[2] Respondents also refer to the denomination as a party to a $1 billion insurance policy. This matter is discussed at pages 32-33 of the petition in *Barr.* The policy was taken by GCFA, covered only specified church units, and had a $1 million liability limit. The annual premium is only $19,991. (R. Ex. 29 at 2736)

agency, or other unit within the United Methodist connection; yet, that is precisely what the term means.[3] "The United Methodist Church" (in the entity sense in which the respondents seek to sue it) has employed no person. App. 2, at Par. 2.

3. The Denomination as "Owner."

Despite a complete absence of any deeds, title papers or other evidence of conveyance or ownership, the respondents proclaim that "UMC . . . owns property." (Br. at 18.) When it appears to suit an emotional purpose, respondents refer to the $1 billion in total givings of United Methodists throughout the world to their local churches and aggregate the property values of all such individual churches (Br. at 22) to suggest that "UMC" *per se,* is the owner of vast wealth. Again, respondents' only support is their interpretation of *The Book of Discipline,* ¶¶ 6, 2401, 2403 and 2445, based on the assumption that the denominational name is used with the quasi-corporate meaning they advocate. Yet the undisputed expert testimony is that all titles to property within United Methodism are in the individual units, and none are in the collective denomination, viewed by respondents as an entity. (App. 2 at Par. 2; App. 4 at 5-6; Fraser Dep. at 42).

[3] It is not surprising that occasional reference to the denomination as a singular noun in daily parlance and disciplinary sentence structure has been made in the 200-year history of the connection. Every major religious denomination is usually referred to as "the church," and those words can have any number of meanings, in religious usage, denoting anything from a local community church to an annual conference, to the total denomination, to the entire fellowship of Christians worldwide. See discussion of religious terminology in Note, 75 Harv. L. Rev. 1142, 1160; also definition of "church" in *The Random House Dictionary of the English Language* 264 (1973 ed.).

Nor can the trust clauses (*The Book of Discipline,* Pars. 2401 and 2403) be fairly cited for the proposition that the denomination is an "owner" in the usual sense, or a "controlling" single-bodied entity. As the unanimous expert testimony showed (App. 2, Par. 2; Wayland dep. at 226; Leiffer dep. at 148-149), individual units within the denomination hold real property for their own use and for the benefit of those who are members of the general faith. This method of protecting charitable and religious holdings is firmly entrenched in our common law. *See, e.g., Brady* v. *Reiner,* 198 S.E.2d 812 (W.Va. 1973). Trust clauses merely insure that the voluntary gifts of worshippers for the purpose of carrying out the religious mission of a particular faith will be conserved for common denominational purposes at the level and location where such properties were initially placed into service. Within United Methodism, there is no central decision-maker to conduct surveillance and decide when to litigate to enforce trust clauses. Such cases are brought by annual conference officials in the affected locality —usually by district superintendents (*i.e.,* ministers who are assigned by a bishop to coordinate the work of local churches within a district or sub-area of an annual conference). Since the trust clauses are not centrally administered, there is no mechanism for seizure of local properties by the "United Methodist Church," nor is there any "reverter" procedure or any history of relocating title or control away from a dissident local unit into a title-holding entity known as the "United Methodist Church." Wayland Dep. at 226.

4. The Denomination as "Litigator."

Respondents' treatment of cases concerning property disputes in the United Methodist Church likewise portrays

"UMC" as the actor in cases brought by units within the denomination. (Br. at 32.) As noted in the petition (at 22n.8), the United Methodist Church, as an entity, has never engaged in litigation.

Respondents' misuse of the term "UMC" is by no means confined to these instances. To the contrary, there are no less than 38 instances misleadingly inserted throughout the opposition brief, in which the respondents state that "UMC" is the active party in the present litigation (*E.g. "UMC asks* this Court to disregard substantial evidence . . ." Br. at 12; *"UMC challenges* the determinations of the District Court . . ." Br. at 13; *"UMC seeks* to establish constitutional immunity. . . ." Br. at 27). Respondents thus assume the point in issue—whether there is a corporate structure capable of speaking as "the United Methodist Church"—and by their driving repetition seek to create the impression that their assumption is unquestioned.[4]

It nevertheless remains the case that the United Methodist Church is a connectional confederation of largely independent, separate entities, without central management, headquarters or funds. The questions raised by this case must be decided on that basis.

---

[4] In their effort to invest the denomination with the appearance of a unified jural activity, Respondents have even resorted to the gimmick of transmitting a $10 check payable to the United Methodist Church. (Br. at 17.) Respondents' counsel arranged to have the check sent by their legal secretary to 1200 Davis Street, Evanston, Illinois (the offices of GCFA), accompanied by a letter representing that it was "to further the work of the United Methodist Church". The check was cleared and credited to the World Hunger Fund of the General Council on Ministries—scarcely an event of great legal significance. It is now obvious that the purpose of the check was not to further religion, but to structure a legal strategem.

II.

RESPONDENTS HAVE FAILED TO DEMONSTRATE HOW THE CASE MAY PROCEED AGAINST THE DENOMINATION WITHOUT SERIOUS DENIALS OF DUE PROCESS.

The petition identified two major areas in which the constitutional guarantee of due process is offended by the holding that the United Methodist Church is an unincorporated association: (a) the denomination as a whole is without the structural or functional capacity to conduct litigation; and (b) a judgment against the denominational name would be enforced by levying on presently unidentified religious units whose individual properties are claimed to be "associational." Respondents have made no response whatever to the first problem. They have given only a cursory treatment to the second. (Br. at 23-25.)

Respondents have advised this court that no United Methodist unit will have its property rights concluded *in absentia* in this case, "because federal [case] law prohibits satisfaction of any judgment against UMC from their individual assets." (Br. at 23.) This again, is wholly question-begging. The issue is whether assets held by separate units of United Methodism will later be subject to levy on the claim that they are "actually" assets of the whole denomination. That issue must be addressed, because there are no assets whatever held by the denomination per se. Each denominational unit whose property may be at stake has the due process right to defend on the merits, and not at some later date when all questions of the merits have been concluded and mere judgment satisfaction proceedings remain. Respondents cannot explain this problem away.

Furthermore, respondents have not been at all clear in advising this Court and the courts below concerning their

design for judgment execution. In the proceedings below, the most that they would say is that there was no intention to seek the property of *individual* United Methodists (*e.g.*, Plaintiffs' Consolidated Opposition to Defendants' Motions, dated June 30, 1978, at 17.) When the proceedings reached this Court, respondents apparently sensing that their ambivalence on judgment execution could harm their case, "refined" their position. In papers filed with Mr. Justice Rehnquist, in *Barr,* opposing a Stay Pending Review on Certiorari, they sought to assure the Circuit Justice that no due process infringements were intended because they really meant "UMC" to include only the two units (GCFA and PSWAC) specifically named. Respondents said:

> "In this case [Barr], liability, when it is established, will be against the UMC . . . not against individual Methodists *or units of UMC not named and served in this action.*"
>
> Opposition to Application for Stay, S.Ct. Misc. No. A-1084, filed June 18, 1979, at 24-25 (Emphasis added)

A similar statement is made in their opposing brief to this Court in the instant proceeding. (Br. at 25.)

These assertions stand in sharp contrast to the account which Plaintiffs' counsel gave Judge Schwartz during oral arguments on the Motions to Dismiss. The colloquy was as follows:

> "The Court: In other words, why are you suing, why do you want to sue the United States Methodist Church as a jural entity?
>
> "Mr. Lerach: Because, I believe, Your Honor, that it is the only entity that has sufficient funds to respond in damages to make the Plaintiffs whole in this case."
>
> Transcript of August 15, 1978 at 37

In fact, the only reason for naming the denomination in addition to the appearing defendants is to obtain additional assets by levying upon "general funds" held by unnamed and absent units. Respondents state (Br. at 25 n.13): "associational funds exist and are designated 'general church funds.'" Respondents thus seek to leave the impression that "general" means "unrestricted," or "surplus," as that term might be used in "general funds of the State of California" or "general funds of IBM corporation." Yet "general" is a word used in United Methodist parlance to identify approximately 5½% of worshippers' donations which local churches choose to earmark for use by a small segment of the denomination; namely, the 13 "general level" boards carrying out prescribed national and global missional programs. (Wayland dep. at 215, 218-19) After the amount of the local churches' "general" contribution is decided within the local church (those churches are free to limit or even omit any such donations), the funds are routed to the local annual conference which, in turn, forwards the same to GCFA. GCFA then acts as a conduit in distributing the designated funds to the end recipient. Such "general" funds are no more "associational" funds of all United Methodism than are "local" funds in the possession of local community churches or "annual conference" funds in the possession of individual units like the Pacific and Southwest Annual Conference. In short, if respondents can seize these "general" level funds used to support the missions of the general level agencies, either in transit through GCFA or in the hands of the boards who are the end recipients, there is no logical reason why they cannot also seize the bank accounts of local churches, annual conferences, and other similar religious units.

III.

RESPONDENTS DO NOT ADDRESS, OR EVEN CORRECTLY IDENTIFY, THE INFRINGEMENT UPON RELIGIOUS FREEDOM POSED BY THIS CASE

This case presents the further question of whether requiring United Methodists to litigate as an entity infringes on their right to practice their religion freely. The issue is straight-forward: does the centralization required for such litigation impermissibly conflict with the decentralized "connectionalism" of United Methodism? The answer to that question cannot be determined without an in-depth assessment of United Methodist polity. The issue now before this Court is, thus, an essentially religious controversy, and not the "purely secular" securities law matter which respondents depict. The respondents ignore this issue, and instead deal with two other issues which are not raised by the petition.

First, respondents assert that petitioners are seeking a holding that their experts' testimony is infallible. (Br. at 37). Not so. Petitioners merely have asserted the obvious: that courts are not well equipped to delve into the nuances of religious organization without expert assistance. This principle was stated in *Watson* v. *Jones,* 13 Wall 679, 729 (1872) and is reflected in this Court's holdings minimizing interference by civil courts in internal religious disputes. *E.g., Jones* v. *Wolf,* ___ U.S. ___, 47 U.S.L.W. 4962 (July 2, 1979). It is, however, no less applicable in cases brought by third parties. Petitioners have thus suggested that, in determining the government and structure of the United Methodist Church, the District Court should not have ignored the substantial body of unanimous expertise concerning the details of the denomination's polity.[6]

[6] There is no factual basis for respondents' statement that "[t]he organization's witnesses opined that it cannot be sued." (Br. at 26.) In fact, as the record shows, such witnesses did not invade the province of the court with such a bald conclusion, but rather, confined their testimony to detailed descriptions of the relationships, activities and usages within the denomination.

Petitioners have never insisted that a civil court must rubber-stamp the expertise of church authorities. However, this is not a case where a court, faced with alternative interpretations of denominational polity offered by differing theological experts, was required to resolve the issue by crediting one interpretation as authoritative over another. Here, respondents could not, or would not, produce a single expert witness in support of their contentions. What resulted was the spectacle of civil lawyers, unaffiliated with United Methodism, and totally unfamiliar with its tenets prior to the inception of the case, expounding in minute detail on the most complex and religiously sensitive aspects of the denomination's polity. Respondents continue this practice before this Court. Yet, ironically, these strangers to the denomination describe their own self-serving interpretation as an "objective reasoning," (Br. at 37) while implying that the expert testimony of denominational leaders was false (Br. at 12), or derisively labeling it as "infallible" (Br. at 27.)

Second, respondents continue to treat this case as though United Methodists were seeking religious immunity (Br. at 26), despite the fact that every one of the approximately 45,000 separate and distinct units of United Methodism, most of which are incorporated, stands ready to be sued and defend for its acts and omissions.

Petitioners have never quarreled with the premise that religious *entities* may not flaunt civil law in their secular activities. However, respondents' citation of cases to that effect begs the very question of first impression here at bar. That question is whether a whole religious system, as opposed to one or more component jural units comprising it, can be forced into an entity status under the label "unincorporated association," answerable as a single unit, irrespective of its internal structure and nature. Several separate United Methodist related corporations have been made

parties defendant in the *Pacific Homes* cases and not one of them has questioned its suability or jural status. Each has answered. If respondents seek relief against still other units of the denomination, they should simply name them, not try to reach all others, collectively, in an attack on the denominational name as a totality.

On its face, respondents' web of litigation against the whole denomination reveals a quest for "deep pocket" and a convenient target for *in terrorem* litigation techniques. This Court's decision in *Blue Chip Stamps* v. *Manor Drug Stores,* 421 U.S. 723 (1975) expressed great concern about the danger of vexatious and unfounded litigation, recognizing that the court processes are often invoked in aid of a settlement strategy on the theory that "the very pendency of the lawsuit may frustrate or delay normal business activity of the defendant, which is totally unrelated to the lawsuit." 421 U.S. at 723. *Cf.* Burger, C. J., in *Reiter* v. *Sonotone Corporation,* 47 U.S.L.W. 4672, 4676 (June 11, 1979). Just such processes are at work here, challenging the chosen government of religious believers.

IV.

THERE IS NO BASIS FOR RESPONDENTS' CLAIM THAT PETITIONERS LACK STANDING TO CHALLENGE SERVICE OF PROCESS UPON THEM.

Respondents curiously maintain (Br. at 8-11) that Bishop Milhouse and Dr. Wayland, although respondents singled them out as authentic agents or representatives of The United Methodist Church for service of process, lack standing herein.[7] This mistaken argument merely reflects the

[7] Respondents have omitted any mention of First Amendment cases where this Court has employed a more liberal standard in disputes over standing. See, *e.g., Flast* v. *Cohen,* 392 U.S. 83 (1968) (religious freedom) and *Law School Research Council* v. *Wadmond,* 401 U.S. 154 (1971) (chilling of free association).

irony of respondents' efforts against the United Methodist Church.

In denying that they could accept service on behalf of the United Methodist Church as an unincorporated association, the petitioners never denied that they were United Methodists or that they were interested in whether United Methodists could be fused into a single litigating entity. Their interest was, in fact, sufficiently obvious that respondents did not hit upon a standing argument until this case was before the Ninth Circuit Court of Appeals on petition for mandamus. (The Ninth Circuit did not accept the standing argument, but denied review on other grounds.)

Respondents' standing argument simply underscores the central question of this lawsuit—who *is* supposed to act for the denomination? All of the decisions cited by respondents for denying standing disqualified a litigant whose "stake" in a given issue is tenuous, on the assumption that some other person or entity (whose jural status is undisputed) would be better situated to raise the point. *E.g., Tileston* v. *Ullman,* 318 U.S. 44, 46 (1943). Here, of course, the "other" litigant whose appearance is insisted upon by the respondents is the denomination itself, whose disputed entity status and capacity to litigate is at the very heart of the proceeding. To say that the persons served with process cannot litigate these questions is to eliminate any effective mechanism for advising this Court on the issues at hand.[8] The denomination has no capacity to do so. Thus, respondents' insistence that interests encompassed within the United Methodist denomination be defended only through the appearance of something called the "United Methodist Church" is in actuality an impossible demand that the denomination at once constitute itself a legal entity in order to appear in court and deny its entity status.

[8] While not openly acknowledging this dilemma in their court papers, respondents' counsel have done so with evident relish in their communications with potential class members. In a form of newsletter or monthly litigation report beamed at the residents of Pacific Homes, said counsel stated as follows: "If it [The United Methodist Church] responded to the Complaint [in the *Barr* proceeding] in the ordinary fashion, it would admit that it was capable of doing the things that legal persons do, thereby mooting its challenge to being sued." On the other hand, in the event of default, the residents are told, ". . . [this] cuts off the right of UMC to file anything at all in the case [except] . . . a request to set aside the default. However, [under California law] . . . it would be very difficult to get the default withdrawn." Finally, referring to the instant certiorari petition, the document advises putative *Barr* class members that ". . . it appears now more clearly than ever, that UMC is in the case to stay."

Ex. "A" to Motion to Prohibit Unauthorized Communications with Potential Class Members in *Barr*, filed September 10, 1979, at 1-3.

This paradox will continue as long as the litigation is permitted to be maintained against the United Methodist Church as an unincorporated association. Most recently, respondents successfully attacked an answer which petitioners sought to file in the underlying proceedings, on behalf of the denomination, because the "UMC" itself did not unqualifiedly submit the answer and because petitioners attempted to preserve the defenses of the denomination's capacity. Transcript of Hearing, July 16, 1979, pp. 18-24. Yet, lacking any central executive, it is manifest that some individual United Methodist member or unit must answer if any answer is to be made.

By refusing the tendered answer, as by their standing argument, respondents seek to foreclose any effective review of the capacity issues. Their suggestion is that the denomination simply default—thus conceding judgment to them if the capacity question should ultimately be resolved in their favor. (Br. at 5.)

There is no one who can effectively litigate on behalf of all United Methodism. Therefore, petitioners must be allowed to raise the question of capacity, and this court should grant reviews before further impossible litigation is required by respondents. This is not a mere interlocutory matter as casually pronounced by respondents. While no final judgment order has been entered (nor can such an order properly be entered while numerous other jural co-defendants are defending on the merits without violence to the "one judgment" rule of this Court in *Frow* v. *De La Vega*, 82 U.S. 552 (1872), a point of practical finality has been reached. Irreversible damage to constitutionally protected values will necessarily attend any further proceedings against the denomination. The issues are thus ripe and require this court's prompt corrective intervention.

CONCLUSION

For the reasons stated above, and in the Petition for Writ of Certiorari, petitioners respectfully pray that their petition be granted.

Respectfully submitted,

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